1935

Department of Loss Revenue and [illegible]

OFFICE Board of Revenue

STATION Nassau.

No. No. 4148

Dated 1-11-35

Pages in the file

(SUBJECT.)

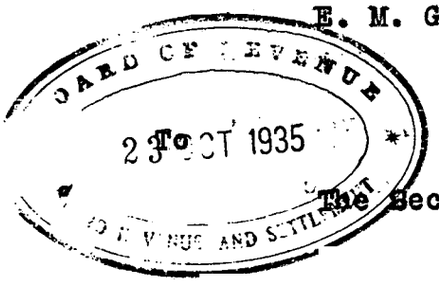
Ref. A3.No. 3565-35. 5 South Kanara Collector's Office,

Mangalore, dated 19 - 10 - 1935.

From

E. M. Gawne, Esquire, I.C.S.,

Collector of South Kanara.



To

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s

Sir,

Suits - Mangalore - District Munsif's Court - O.S.No. 283/35 - Assignment - Kodialbail village - R.S.24/9 (T.S.No. 1558/1) warg claim.

I enclose a copy of the plaint in the above suit, which is for a declaration that R.S.No. 24/9 of Kodialbail village, Mangalore Taluk, corresponding to T.S.No. 1558/1 of Mangalore Town, belongs to the plaintiff's family on mulgeni right and that that family is entitled to possession and enjoyment of the plot and also for a permanent injunction restraining the defendant (Government) from evicting the plaintiff and his family from the land.

2. In September 1934, the plaintiff approached me with a petition advancing warg claim in respect of the plot in question on just the same lines as are now set up in the plaint. At the time of the enquiry, it transpired that the plaintiff's cousin, one Kittappa Manai, had in 1931 applied for the inclusion of this very plot in his mulgeni holding on the same warg right. The Tahsildar who inspected the land in 1932 found that the warg claim was timebarred, that the documents relied upon by the petitioner were private ones and that the recitals therein were not binding on Government and he rejected the application after obtaining the Revenue Divisional Officer's sanction, as the assignment was objected to by the Municipal Council, Mangalore and also as the plot contained a devil shrine belonging to the Adi Dravidas. There was no appeal against this order of

rejection and subsequently, the portion containing the devil shrine with some space around it was separately sub-divided and transferred to Devil-shrine poramboke

3. Mr. V. Venkat Rao. the Tahsildar, who subsequently inspected the land in connection with the plaintiff's warg claim, found that the plot was devoid of any improvements except the devil-shrine referred to above, and some cashew plants which latter had been planted only lately. He also reported that his experience showed that in the old days many rich wargdars used to include considerable extents of assessed waste in their private documents and that such inclusion meant nothing. In these circumstances, I rejected the plaintiff's warg claim as time-barred in October 1934. In November 1934, the plaintiff sent in his suit notice. which was simply recorded. - Meanwhile, the Tahsildar, who received certain representations from the villagers about certain illegal acts of the plaintiff, issued a notice to the plaintiff directing him not to interfere with the land in question. In April last, the plaintiff sent in another suit notice about the same matter and I took no notice of it. Hence this suit.

4. The Government Pleader, whom I have consulted has in his letter Ref.G.131/35 dated 3-9-35 (copy enclosed), taken a different view altogether. He assumes that the suit proper is included within the boundaries given in the sale deed and the mulgeni chit of 1867 relied upon by the plaintiff and says that the fact that Government are not a party to these documents is by itself not sufficient to non-suit the plainti He also attaches some importance to the fact that the land is enclosed by mud walls, which are reported to be very old and says that on merits, the plaintiff has a fairly good case. He further assumes that the plaintiff's warg claim was reject mainly on the ground that it was time-barred and thinks that Government have to rely for their defence mainly on the provi of the Survey and Boundaries Act, which would be a mere technical one.

5. Since the receipt of the Government Pleader's letter quoted above, I have inspected the land and found that most of the fears of the Government Pleader are unfounded. The ------ boundaries as described in the oldest of the documents (1867) relied upon by the plaintiff are as follow:-

East - to the west of the compound wall of Thome Prabhu's garden appertaining to Munda Pujari's warg.

West - to the east of the wall belonging to this(plaintiff's predecessor's) warg.

North to the south of the trench through which water passes.

South - to the north of the wall adjoining the road leading to Kadri.

On verification, it is found that there is no warg land belonging to the plaintiff's predecessor or the wall referred to on the west. I enclose a sketch showing the land in question and the boundaries thereof Instead of the wargland or the wall there is on the west a burial ground and a public Municipal road It is thus clear that the boundaries relied upon by the ------ plaintiff do not tally on the ground. I also find that in a later document - a mortgage deed of 1896 - the plaintiff's mother had shown the road and the burial ground as the western boundary of the plot, which fact makes the plaintiff's documents all the more unreliable. The paimash chitta, referred to by the Government Pleader has been destroyed and as such, it is not possible to refer to it. Again, it is for the plaintiff (and not for Government) to produce such documents as are binding on Government and are favourable to him.

contain any notice issued to the plaintiff's precedessor-in-title or to the so called mulgar either with regard to the survey of the lands in the vicinity or with regard to the determination of the boundaries thereof. On the other hand, the Settlement A.Register, which has registered the land as 'assessed waste-dry' is a document, which has been published and which is within the knowledge of all villagers. The plaintiff cannot deny that he or his predecessors-in-title had knowledge as to how the land had been registered in that register. In this connection, I invite the attention of the Board to the High Court decision in S.A.No.912 of 1901, communicated with B.P. No.78, L. R., dated 13-5-1903, which clearly declares the finality of entries in Settlement Registers. In the face of this decision, I think it doubtful if it is essential that Government should prove service of the notices under the Survey and Boundaries Act.

Coming to the question of the enclosures referred to by the Government Pleader, I submit that the only walls are on the southern and eastern sides of the plot. According to the oldest documents, relied upon by the plaintiff, these walls themselves form the southern and eastern boundaries of the plot and as such, the plaintiff cannot lay a legal claim over them. Similarly the trench on the north-western side forms the boundary on that side and the plaintiff can now hardly say that it was dug by his ancestors. Such enclosures are found around almost every temple or other place of worship and they cannot therefore prove exclusive possession of the plot by the plainti They only mean that the devil shrine is well protected. Devil shrines are, like other Hindu temples, places of worship and Government have been allowing the location of such places of worship on Government lands (including assessed wastes), whethe or not such institutions are of a public nature or receive tasdik. The fact that such institutions exist on certain lands cannot therefore confer any warg right to any private individua

8. The only interesting point is that the land is

level spot in a hill side, which has been levelled carefully at some time. The levelling has been done by putting earth to the south east on the low ground, and by piling earth to the north west on the high ground. The result is a perfectly level place, remarkably so, on the hill-side. This levelling cannot have been done for wet cultivation, as in that case no one would have taken the trouble to keep a drain above the plot. On the otherhand, if it was for paddy cultivation, they would have wished to take advantage of any water that would flow down the hill. There is no tradition that the land has been cultivated. On the other hand, the only thing to be seen is the Bhutastanam (devil shrine), which is at the corner, right against the hill-side and so, the whole of the levelling is in front of the shrine. This makes me think that it is extremely probable that the levelling was done in connection with some festival there. Local enquiries as to how the place got levelled led to the answer that the worshippers at the shrine did the work. It may in times past have been a more important gathering than it is now, for all we know, In this particular case, the devil shrine is inside the Mangalore Municipality and the votaries, who are all day-labourers of the depressed classes, must have been induced or must have thought it wise to have the ground levelled as in the case of other Hindu temples and devil shrines within the town. This, I think, is a plausible explanation for the levelling and at any rate, such a levelling cannot confer any title on the plaintiff.

9. Another point which is urged on behalf of the plaintiff is about the grazing of cattle in the land. In the matter of grazing it is impossible to say who has a right better than another to a bit of land, which is Government land. The plaintiff has no lands or houses in the neighbourhood and cannot therefore have even an apparent right to a nearby piece of waste land. Further, free grazing is generally allowed by Government on all unreserved lands and the plaintiff can claim no right by reason of grazing of cattle. His action, if any, in claiming fees for grazing of cattle by others

is unwarranted and cannot be permitted by Government. This is a test case and I think Government have a fair case to defend. I recommend that the Board may be pleased to sanction its defence and approve the enclosed draft written statement prepared by the Government Pleader and slightly amended by me.

10. The plaint in this case is dated 25.7.1935. I received a copy thereof together with the summons on 8.8.1935. The suit stands posted to 8.11.1935. I enclose the records detailed in the margin for reference.

(1)	Collector's office	D.Dis.4407/34.
(2)	Do.	D.Dis.5648/34.
(3)	Mangalore Taluk office	D.R.434/1340.
(4)	Do.	D.Dis.10150/34.

(B) (C) (D) (E)

Your obedient servant,

In the Court of the District Munsiff of Mangalore.

Original Suit No. 283 of 1935:

Between:-

Ganapaiva----------Plaintiff.

AND

The Secretary of State for India in Council. } Defendant.

Plaint under Section 26 Schedule 1 Order VII and also under Section 79 and Order XXVII of Civil Procedure.

Plaintiff begs to state as follows:--

1. Ganapaiva, plaintiff, is the nephew of Dodda Annu Shetty and is a land-holder residing in Codialbail village, Mangalore Town. Plaintiff's address for service is as above.

2. The Secretary of State for India in Council is the Defendant.

3. (1) That the plaintiff is the ejaman and manager of his undivided family governed by Aliya-Santana law, and sues in his capacity as such.

(2) That the property forming R.S.No.24/9 of Codialbail village (corresponding to T.S.No.1558/1) and more fully described in the schedule hereunder, belonged to the ancestors of the plaintiff as forming part of their warg property comprised in Muli No. 10 of Antariga Thimma Shetty's warg.

(3) That on 15-3-1867 one Sanna Thyampanna Shetty, the then Ejaman of Plaintiff's family, sold the plot R.S.No.24/9 along with some other land in the neighbourhood belonging to his family, to one Juao Juje Coelno, under a registered sale deed; and on the same day, he obtained the same and some other plots back on mulgeni lease from the said Vendee under a registered mulgenichit of even date.

(4) That from time out of memory till the aforesaid sale in 1867, the plaintiff's family was in exclusive

possession and enjoyment of the aforesaid R.S.No.24/9 in assertion of their family varg right; and thereafter the same has continued in their exclusive possession and enjoyment as part of their mulgeni holding.

(5) That by a mistake or oversight the said plot however appears to have been left out of the patta issued to the present mulgar at the time of the last Settlement; and the same appears to have been classified as assessed waste. The said mistake came to the knowledge of the plaintiff only regently in about July 1934 in connection with some enquiry held by the Revenue authorities regarding a Bhutastan existing on the said plot.

plaintiff was served with a notice by the Tahsildar that he should not interfere with the said plot or effect any repairs to the old boundary wall of the same. Plaintiff has been since then threatened with proceedings to evict him from possession thereof.

(8) The plaintiff submits that the order of the Collector is due to a misapprehension of law and facts. The non-inclusion of the plot in the patta of the mulgar cannot affect the rights of the plaintiff's family who are mulgeni tenants of the same; and to whom no patta was issued [illegible] settlement and who have been in exclusive possession and enjoyment thereof all along up till now. Plaintiff has been also paying the Municipal taxes thereon to the Municipality Consequently the plaintiff's family is entitled to continue in possession and enjoyment of the said plot on the strength of their mulgeni title without being disturbed in any way by the defendant.

(1) Declaration that the plot R.S.No.24/ of Kodialbail village more fully described her under belongs to the plaintiff's family on mulgeni right and that the said family is entitled to continue in exclusive possession and enjoyment of the same, without any disturbance or interference by the defendant and for a permanent injunction restraining the defendant from taking any coercive proceedings against plaintiff and his family to evict them from the same. This relief is valued at half of ten times the assessment on the property, i.e., ½ (10 x 15 as. = Rs. 9-6-0) ½ Rs. 4-11-0 plus the value of the building thereon viz, Rupees 40-0-0;

Letter-from M.R.Ry. B. Venkatarao Baliga Avl., B.A.,B.L.,
Acting Government Pleader, Mangalore.
To-the Collector of South Kanara, Mangalore.
Dated-Mangalore, 3.9.1935.
No.-Ref.G.131/35.

Suits - Mangalore District Munsif's Court - O.S.No.283/35. Assignment - Kodialbail village - R.S.24/9 (T.S.No.1558/1) - Warg Claim.

In forwarding herewith the draft written statement in the above suit, I desire to make the following remarks:-

2. On going through the papers I think it cannot be seriously disputed that the suit property is included within the boundaries given in the sale deed and mulgenichit of 1867 relied upon by the claimant. It is no doubt true that the Government is not a party to these documents, but that by itself may not be sufficient to non-suit the plaintiff. Those documents show that the suit property was considered to be part of muli warg No.10 of Kodialbail village and was dealt with as such. The documents having come into existence long before any disputes arose are of some evidentiary value. If the paimash Chitta of Muli Warg No.10 of Kodialbail Village (Antariga Timma Shetty's Warg) is available it may throw considerable light and help to clear up matters.

3. With regard to possession, it is no doubt true that there are no trees or buildings (except a Bhutastan) on the land and the land is not capable of effective possession. It may, therefore, be contended that the principle that where land is not capable of effective possession the principle possession follows title should be applied. It is however significant that the land is enclosed by mud walls which are reported to be very old. The application for darkhast ----- appears to have been rejected mainly on the ground that the Municipal Council objected to assignment. The claimant says that the Bhutastan was got built by his mother. It is not

clear from the papers sent to me as to when the Bhutastan was built or by whom. I would like to know whether it has any tasdik and whether there is any documentary evidence to show that it is a public Institution.

4. The warg claim was rejected mainly on the ground that it was time barred. With regard to this contention the following further particulars are required. We have to see whether the case is governed by the provisions of the Madras Survey and Boundaries Act 1897 or by the still earlier Acts II of 1864. In order to decide that point it is necessary to find out when the survey was first made in this village and when R.S.No.24/9 was classified and registered as assessed Government waste. It is also necessary to know whether the notification contemplated by section 6 of the Madras Survey and Boundaries Act has been published and if so when and whether a copy of the notification, if any, is available. Again Section 9 of the said Act empowers the Survey Officer to determine and record as undisputed any boundary in respect of which no dispute is brought to his notice and sub clause (2) of the said Section requires that notice of the decision should be given to the registered holders. We must also know if this has been done. In case of disputes, the procedure laid down in Section 10 should be followed. Probably this is a case where no dispute was brought to the notice of the Survey Officer.

5. It seems to me that we have to rely mainly on the provisions of the Survey and Boundaries Act. It is, therefore, essential that we must know the facts accurately. I have prepared the written statement on the assumption that the case is governed by the Madras Survey and Boundaries Act 1897 and that everything required by law to be done has been done. If this assumption is right, plaintiff's claim may not be sustainable. On the merits, I should think plaintiff has got a fairly good case. This seems to have been recognised by the

Revenue Officials during the enquiry. The main defence to the suit is a technical one.

6 Before concluding, I desire to bring to your notice that some years ago when the mulgar (land-lord) filed a suit against the plaintiff's family to enforce forfeiture of the mulgeni relied upon by the plaintiff on the ground of some improper alienation I took up the cause of the plaintiff's family and the contention of the family that no forfeiture had been incurred was upheld. This is the suit referred to in paragraph 8 of the plaintiff's petition, dated 5.9.1934 to the Collector.

In the Court of the District Munsif of Mangalore.

O.S.No.283 of 1935.

Between:-

Ganapalva — Plaintiff

and

The Secretary of State for India in Council — Defendant.

Written statement under Order VIII Rules 1 and 2 of Act V of 1908.

Defendant named above states as follows:-

1. That all processes etc., to be served on the defendant in this suit may be served on the Collector of South Kanara.

2. That the defendant does not admit that R.S.No.24/9 of Kodialbail village (corresponding to T.S.No.1558/1) belonged to the ancestors of the plaintiff as forming part of Muli No.10 known as Antariga Timma Shetty's warg, or that the plaintiff's family was in exclusive possession of the same till 1867 on assertion of warg right and thereafter on mulgeni right as alleged in the plaint.

3. That this defendant is not aware of the sale deed mulgenichit referred to in paragraph 3 sub paragraph (3) of the plaint and does not admit that the plaint property is comprised within the boundaries given in those documents and submits that even if it is included within the boundaries and the parties to those documents purported to deal with the same, those transactions are not valid and binding against the defendant who is not a party to the said transactions which cannot affect the right of the defendant.

4. That the defendant admits that at the time of last settlement the suit property was not included in any holding and that it was classified and registered as assessed waste belonging to Government but denies that such registry was due to any mistake or oversight.

5. That the defendant submits that the suit property was classified and registered as assessed waste belonging to Government because it did not belong to any private party but it really belonged to Government.

6. That the defendant does not admit that the plaintiff came to know that the suit property was classified and registe as assessed Government waste only in July 1934 as alleged in the plaint and submits that even if it is a fact it does not entitle the plaintiff to claim the suit property now nor does it affect the right of the defendant. As a matter of fact, Kittappa Hanal a member of plaintiff's family and another nephew of Dodda Annu Shetty had advanced a similar claim to the suit property in March 1931 which was rejected. This is another attempt to agitate a stale claim.

7. That the defendant while admitting that there is a Bhutastan on the suit property does not admit that the ------- Bhutastan of the said Daiva was formerly in another property of the plaintiff's family, that the Bhutastan was got built by plaintiff's mother, that the same is of the right of the ----- plaintiff's family and is under its control and management as alleged in paragraph 3 sub paragraph 6 of the plaint.

8. This defendant learns and verily believes that the Daiva is worshipped by the depressed classes. This defendant admits that the site of the Bhutastan together with some surrr ing land has been demarcated as R.S.No.24/9B and registered as poramboke as per order of the Revenue Divisional Officer da 30-4-1932. Plaintiff's consent was not necessary for the said purpose and plaintiff is not entitled to object to the same.

9. That the defendant admits that the plaintiff applied for the inclusion of the suit property in the holding of his landlord under whom he claims it as a mulgeni or if tha landlord is not willing to this course for issuing a separate patta to him and his claim was rejected.

10 That the plaintiff in spite of the rejection of his claim attempted to occupy the land without any right to do so and to create evidence of possession and enjoyment an

the Tahsildar of Mangalore rightly served the order referred to in para 3 sub para 8 of plaint. If the plaintiff attempts to interfere with the possession of the Government and claims possession,he cannot complain if he is evicted as the Government is entitled to do.

11. That the defendant denies that the order of the Collector is based upon any misapprehension of law or facts and submits that the proposition of law enunciated in para 3 sub para 8 of the plaint is not correct. The claim of the plaintiff, if any, is barred under the provisions of the Indian Limitation Act IX of 1908 and the alleged exclusive possession and enjoyment of the plaintiff cannot avail him

12. That the defendant does not admit that plaintiff has been paying any Municipal taxes to the Municipality in respect of the suit property and submits that the collection of any Municipal taxes by the Municipality cannot create a title in the plaintiff nor affect the right of the defendant.

13. As the plaintiff's warg claim had been rejected the notice issued by the plaintiff was recorded., it is not correct to say that it was accepted without demur.

14. That the date when the cause of action is said to have arisen is not correct. The cause of action if any, should be deemed to have accrued when the suit property was classified and registered as assessed Government waste which happened more than 30 years ago. The suit is also barred by limitation.

15. That the plaintiff or his family has neither any title to nor any right to be in possession of the suit property.

16. That the defendant puts the plaintiff to strict proof of the fact that he is the present seniormost member of the family that the mulgeni right under the plaint mentioned mulgenichit have devolved on him as the present ejaman of the family.

17. That the suit is opposed to the provisions of section of the Specific Relief Act.

18. That the defendant puts the plaintiff to strict proof

of all allegations not hereby distinctly traversed.

19. That the defendant prays that the suit may be dismissed with costs.

South Kanara Collector's office,
Mangalore, dated 21 - 10 - 1935.

Madhavara
For Collector. M.X

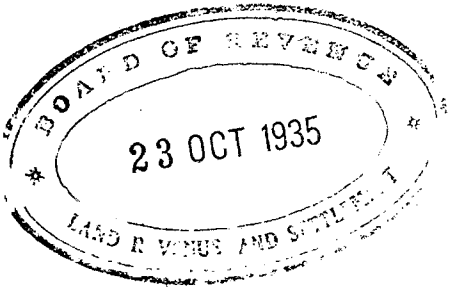
21-10-35

Enclosures to the South Kanara Collector's letter

.Ref.A3.No.3565-35, dated 19-10-1935.

21.10.'35

RP 185
G



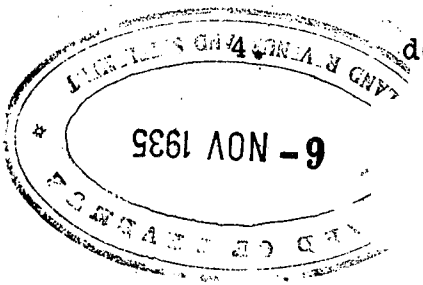
To

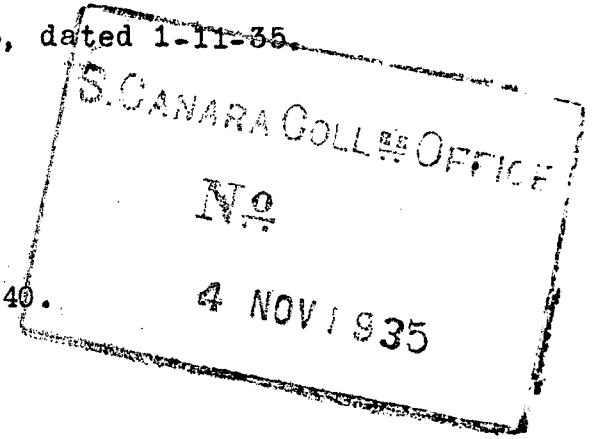
The Secretary to the Board
Land Revenue and Settlement-
Madras

List of records sent with B.P.Ms. 4148, dated 1-11-35.

---

1. Collector's Office D.Dis. 4407/34.
2. do. D.Dis.5648/34.
3. Mangalore Taluk Office D.R. 434/1340.
4. do. D.Dis. 10150/34.





Received the four files mentioned above

(Sd) R Lloyd Rees
4.11.35

Asst Commr

4.11.35

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ..		
When examined ..		
When signed ..		
When despatched.		

SUBJECT:

Suit in O.S. No. 1283/35 (S. Kanara) - Mangalore District Munsif's Court Mangalore town - Kodialbail village T.S. No. 1558/1 - Warg Claim - Defence - Sanctioned.

READ AGAIN _____, dated _____

" " _____ " _____

READ *ALSO*:—

No. _____ From the G. 6996/35-Q, No. _____, dated _____

" _____ " _____

" _____ " _____

~~Order~~ / Resolution — ~~Mem.~~ / ~~Rout.~~ No. 41148, dated _____

The Board sanctions the defence of the suit and approves the draft written statement submitted by the Collector.

J. S. 30/10/35

Dr. 28/10/35 — J. S.

S 28/10/35 — Mg.

Das 28-x-35 — The Collector has satisfactorily met the points raised by the Govt. about the notice under the Survey Act. If the Suit terms is finally found a notice under the Survey Act should have been served on Govt. As the

date of hearing so very
close at hand there is
not time to verify
this

I do not understand
the Coroners' Statement
that an Entry in the
Permanent Register
is fatal. So far as I
know the Entries in the
Revenue Registers are